Suri (Migration) [2024] AATA 530 (6 March 2024)

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DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANTS:	Mr Udit Suri Mrs Kanika Talwar Suri Mr Zyan Talwar Suri
REPRESENTATIVE:	Mr Michael Kotsifas
CASE NUMBER:	2202432
HOME AFFAIRS REFERENCE(S):	BCC2018/3675817
MEMBER:	Warren Stooke AM
DATE:	6 March 2024
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal remits the applications for Skilled Nominated (Permanent) visas for reconsideration, with the direction that the first named applicant and secondary applicants meet the following criteria for Subclass 190 - Skilled - Nominated visas: • Public Interest Criterion 4020 for the purposes of cl 190.216 of Schedule 2 to the Regulations • • Statement made on 6 March 2024 at 1:50pm

CATCHWORDS

MIGRATION – Skilled Nominated (Permanent) visa – Subclass 190 (Skilled – Nominated) – false or misleading information in the visa application – bogus document – employment details – employer investigated by the Department – Tribunal set aside actions against the employer – identity requirements – decision under review remitted

LEGISLATION

Migration Act 1958, ss 5, 65, 140

Migration Regulations 1994, Schedule 2, cl 190.216; Schedule 4, Public Interest Criterion 4020; r, 2.86, 2.89, 2.90, 5.19

CASES

Arora v MIBP [2016] FCAFC 35
Batra v MIAC [2013] FCA 274
Bushell v Minister for Immigration and Citizenship & Anor [2008] FMCA 1193
Talukder v MIAC & Anor [2009] FMCA 223
Trivedi v MIBP [2014] FCAFC 42

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

3. This is an application for review of a decision made by a delegate of the Minister for Home Affairs on 9 February 2022 to refuse to grant the applicants Skilled Nominated (Permanent) visas under s 65 of the *Migration Act 1958* (Cth) (the Act).

4. The applicants applied for the visas on 27 September 2018. The delegate refused to grant the visas on the basis that the first named applicant (the applicant) did not satisfy the requirements of cl 190.216 of Schedule 2 to the *Migration Regulations 1994* (Cth) (the Regulations) because of all information to hand to the delegate, at the time of decision, there was serious concern that the applicant had submitted false and misleading information, contained within the work reference, tax notices of assessment, PAYG documents, bank statements and superannuation statement, in relation to the applicant's claims of employment with City Taxi Care.

5. The applicants appeared before the Tribunal on 20 February 2024 to give evidence and present arguments. The Tribunal also received oral evidence from Mr Harpreet Grewal, who was the applicants' employer at City Taxi Care Pty Ltd.

6. The applicants were represented in relation to the review. The representative attended the Tribunal hearing.

7. The applicant provided evidence that he had received a copy of the delegate's decision from the Department and had read the decision. The applicant stated that he understood the delegate's decision was that the Department thought the applicant's work experience was not legitimate and that the applicant was claiming false employment.

8. The applicant stated that he provided a copy of the decision to the Tribunal with his application for review.

9. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

CONSIDERATION OF CLAIMS AND EVIDENCE

10. The issue in this review is whether the visa applicant meets Public Interest Criterion 4020 (PIC 4020) as required by cl 190.216 for the grant of the visa. Broadly speaking, this requires that:

    - there is no evidence that the applicant has given, or caused to be given, to the Minister, an officer, the Tribunal, a relevant assessing authority, or Medical officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular in relation to the application for the visa or a visa that the applicant held in the 12 months before the application was made: PIC 4020(1); and

    - the applicant and each member of the family unit has not been refused a visa because of a failure to satisfy PIC 4020(1) during the period starting 3 years before the application was made and ending when the visa is granted or refused, unless the applicant was under 18 at the time the application for the refused visa was made: PIC 4020(2) and (2AA); and

    - the applicant satisfies the Minister as to his or her identity: PIC 4020(2A); and

- neither the applicant nor any family unit member has been refused a visa because of a failure to satisfy PIC 4020(2A) during the period starting 10 years before the application was made and ending when the visa is granted or refused, unless the applicant was under 18 at the time the application for the refused visa was made: PIC 4020(2B) and (2BA).

11. The requirements in PIC 4020(1) and (2) can be waived if there are certain compelling or compassionate reasons justifying the granting of the visa: PIC 4020(4). However, this waiver does not apply to the identity requirements in PIC 4020(2A) and (2B). PIC 4020 is extracted in the attachment to this decision.

12. The applicant provided evidence that he was granted a Bridging Visa C on 2 October 2018 with no conditions and no travel.

13. The applicant provided evidence that he completed a Certificate III in Automotive Mechanical Technology from 14 September 2009 to 25 June 2010, which was awarded on 25 June 2010.

14. The applicant provided evidence that he completed a Diploma of Management at Cambridge International College from 13 September 2010 to 26 June 2011, which was awarded on 13 July 2011.

15. The applicant provided evidence that he completed a Diploma of Business at Acumen Education from 5 January 2015 to 6 September 2015.

16. The applicant provided evidence of the completion of a Bachelor of Commerce at Bareilley College, M.J.P Rohilkhand University, India, from 2 April 2002 to 1 April 2004.

17. The applicant provided evidence of a successful skills assessment with Trades Recognition Australia (TRA) for the nominated occupation of Motor Mechanic (General) – 321211 dated 16 August 2018 for work undertaken at City Taxi Care Pty Ltd from 8 June 2017 to 1 July 2018.

18. A workshop Job Card was signed by the authorised assessor on 25 June 2018.

19. The applicant provided evidence of a VETASSESS AQF at the Bachelor degree level dated 8 November 2018 for the occupation of Motor Mechanic (General) – 321211.

20. The applicant provided evidence of undertaking a PTE English language test on 30 July 2018 with an overall score of 75.

21. The applicant provided evidence of an invitation relating to a 190 Skilled visa dated 25 September 2018 from the NSW government that was valid until 24 November 2018.

22. The applicant provided evidence of an AFP name check only dated 1 August 2018 that identified ‘no disclosable court outcomes’.

23. The applicant provided evidence of a Police Clearance Certificate from the Consul General for India, Melbourne, that identified – ‘nothing adverse against the name’.

24. The applicant provided evidence of an ATO assessment for the financial year 1 July 2017 to 30 June 2018, with a gross income of $37,418.

25. The applicant provided evidence of a payslip from City Taxi Care Pty Ltd for the pay period 29 January 2018 to 4 February 2018 that included an annual salary of $36,712.00 and a

payment for the period of a gross wage of $706.00; $67.07 for superannuation. Further, payslips were provided for the period from 4 February 2018 to I July 2018.

26. The applicant provided evidence of his Westpac Bank account statements that covered the employment pay periods from 21 July 2017 to 14 September 2018. In this regard, the information confirmed a fortnightly payment of $1,258 (from 21 July 2017 to 29 June 2018) or $629.00 weekly payments of a net of tax of $629.00 from 8 June 2018.

27. The applicant provided evidence that he had a balance in his LUCRF Superannuation account of $$4,632.48, as at 30 June 2019.

28. Further, statements were submitted from both the applicant and the employer, City Taxi Care Pty Ltd, pertaining to the employment of the applicant.

29. The applicant provided evidence at hearing that he participated in the Job Ready scheme from 5 July 2017 to 1 July 2018 and continued to work with City Taxi Care Pty Ltd until 20 December 2018.

30. The applicant stated that he worked 38 hours per week and received a net wage of $629.00 per week. He stated that superannuation contributions were made to LUCRF superannuation fund.

31. The applicant stated that his work involved servicing and repair of vehicles.

32. The applicant stated that he currently works with a land development company, Red 23 as a Sales Consultant.

33. The applicant stated that he worked with City Taxi Care for more than 12 months and was working at the business when the assessor came to site.

34. The applicant stated that every month he provided documents to TRA about the work he had performed within that period.

35. The applicant stated that the business had 10 to 12 people working on shifts between 9.00am and 5.00pm, initially in Brunswick and subsequently at Tullamarine, where the assessment was undertaken.

36. **Evidence of Mr Harpreet Grewal owner of City Taxi Care Pty Ltd.**

37. The witness stated that he is the owner of City Taxi Care Pty Ltd that was established in 2011 and employs 10 to 12 employees that included two people in the office and 10 mechanics.

38. The witness stated that the business provides major and minor mechanical work on taxis that includes transmission and engine work for LPG, petrol and diesel vehicles; servicing; brake pads; spark plugs and tunes.

39. The witness stated that the applicant worked for the business for more than one year.

40. The witness stated that the business was investigated by the Department and that is why the matter was referred to the AAT.

41. The witness stated that the applicant initially held a 457 visa and was employed in the Tullamarine workshop and previously the Brunswick workshop and that the applicant applied after the Department had investigated the workshop.

42. The witness stated that superannuation payments were remitted to LUCRF superannuation by the accountant for the business, after a period of 6 months.

43. The applicant provided evidence from the business's Westpac account that the applicant was periodically paid $1258 in wages, as one of 10 employees paid from the account during the period of employment of the applicant through 2017 to 2018.

44. **Representative Submission**

45. On the Representative provided the Tribunal with a detailed submission that included the following extracted material:

"1. This is an application for review of a decision made by a delegate of the Minister for Home Affairs on 9 February 2022 to refuse to grant the applicant a Skilled Nominated (Permanent) (class SN) Sub Class 190 visa under s 65 of the *Migration Act 1958* (Cth) (the Act).
2. The applicant applied for the visa on 22 November 2018. The delegate refused to grant the visa on the basis that the applicant did not satisfy the requirements of Public Interest Criterion (PIC) 4020 (1) for the purposes of meeting cl 190.216 of Schedule 2 to the *Migration Regulations 1994* (Cth) (the Regulations). The delegate formed a reasonable suspicion that the applicant gave false and misleading information in his work experience documents to the Department in relation to his visa application.
3. The applicant is a citizen of India. He is married with one child born in Australia on 26 December 2018.
4. The applicant first arrived in Australia on 29th May 2009. He completed several courses in Australia which included the following:
♣ Certificate 111 in automotive Mechanical Technology
♣ Certificate IV in Automotive Mechanical Diagnosis
♣ Diploma of Automotive Technology - **Attachment 1**
5. On 16 August 2018, he obtained a job ready final skills assessment from Trades Recognition Australia (TRA) for his nominated occupation of Motor Mechanic – **Attachment 2**
6. The favourable skills assessment was provided to the applicant after he satisfied TRA requirements which included completion of 1725 hrs of full-time employment over a12 month period with his nominating employer and a technical assessment of the applicant conducted at the applicants place of employment. Step 4 - Job Ready Final Assessment (JRFA) | Trades Recognition Australia
7. The applicant's visa application included evidence that he worked for City Taxi Care Pty Ltd as a motor mechanic from 8 June 2017 to 1st July 2018. The applicant had actually worked with his employer until 30 September 2018 but for TRA skills assessment purposes TRA only count 12 months of employment or 1725 hours of full-time employment.
8. For the following reasons, the Tribunal should conclude that the matter should be remitted for reconsideration.
9. The issue in this review is whether the applicant meets PIC 4020 as required by cl 190.216 for the grant of the visa. Broadly speaking, this requires that:
• *there is no evidence that the applicant has given, or caused to be given, to the Minister, an officer, the Tribunal, a relevant assessing authority, or Medical officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular in relation to the application for the visa or a visa that the applicant held in the 12 months before the application was made: PIC 4020 (1); and*
• *the applicant and each member of the family unit has not been refused a visa*

because of a failure to satisfy PIC 4020 (1) during the period starting 3 years before the application was made and ending when the visa is granted or refused, unless the applicant was under 18 at the time the application for the refused visa was made: PIC 4020 (2) and (2AA); and

• the applicant satisfies the Minister as to his or her identity: PIC 4020 (2A); and

• neither the applicant nor any family unit member has been refused a visa because of a failure to satisfy PIC 4020 (2A) during the period starting 10 years before the application was made and ending when the visa is granted or refused, unless the applicant was under 18 at the time the application for the refused visa was made: PIC 4020 (2B) and (2BA).

10. The requirements in PIC 4020 (1) and (2) can be waived if there are certain compelling or compassionate reasons justifying the granting of the visa: PIC 4020 (4). However, this waiver does not apply to the identity requirements in PIC 4020 (2A) and (2B).

Has the applicant given, or caused to be given, a bogus document or information that is

false or misleading in a material particular?

11. The term 'information that is false or misleading in a material particular' is defined in PIC 4020 (5) and the term 'bogus document' is defined in s 5(1) of the Act (see Attachment C to this decision). In contrast to the definition of 'information that is false or misleading in a material particular' in PIC 4020 (5), the reference in the definition of bogus document to a document that was obtained because of a 'false or misleading' statement has no requirement that it be relevant to a criterion for the grant of the visa: ***Arora v MIBP* [2016] FCAFC 35; *Batra v MIAC* [2013] FCA 274.**

12. The requirement in PIC 4020 (1) not to provide a bogus document, or false or misleading information, applies whether or not the Minister became aware of the bogus document or information that is false or misleading in a material particular because of information given by the applicant: PIC 4020 (3). It also applies whether or not the document or information was provided by the applicant knowingly or unwittingly.

13. While PIC 4020 refers to information that is false, in the sense of purposely untrue, it is not necessary for the Minister (or the Tribunal on review) to conclude that the applicant was aware the information was purposely untrue in order for PIC 4020 to be engaged. However, an element of fraud or deception by some person is necessary to attract the operation of the provision: ***Trivedi v MIBP* [2014] FCAFC 42.**

14. The concept of 'no evidence' in PIC 4020 (1) is not defined in the legislation. However, the Tribunal should note that in ***Bushell v Minister for Immigration and Citizenship & Anor* [2008] FMCA 1193**, Scarlett FM found there was jurisdictional error in a finding by the Tribunal (differently constituted) that there was 'no evidence' in circumstances where there was some evidence, albeit relatively slight, that supported the applicant's claim. Accordingly, the Court held that in such a situation, it was not correct for the Tribunal to say there was no evidence.

15. The Tribunal should note that in ***Talukder v MIAC & Anor* [2009] FMCA 223** ('*Talukder's case*') Driver FM found that the word 'evidence' requires an assessment of the *quality* of the evidence being relied on by the Tribunal *before* finding whether an applicant fails to satisfy the criterion. The Court stated that the use of the word 'evidence' in cl 880.224 (as it was prior to 2 April 2011):

… establishes that the clause requires something more than mere existence of information suggestive of falsity. It requires some probative information. In other words, a decision maker cannot simply take any information suggestive of falsity as sufficient for the purposes of the clause. The decision maker must satisfy himself or herself that the information is acceptable as evidence pointing to false or misleading

information having been given for the purposes of establishing the validity of the visa application and that the falsity or misleading information was material to the visa application.

16. This approach was endorsed in ***Sharma v Minister for Immigration and Multicultural Affairs and Citizenship*** **('*Sharma's case*')** where the Court expressly considered the meaning of 'evidence' in the context of PIC 4020. Specifically, the Court in *Sharma's case* held that the word 'evidence' is used to impose a requirement that whatever facts are conveyed by the material relied upon to establish that information given in connection with the application for a visa was false or misleading in a material particular, they must be facts that are sufficiently probative to lead to that conclusion.

17. Further, in ***Sran v Minister for Immigration and Border Protection*** **('*Sran's case*')** the Court held that what a third party may have done in other cases could not:

… be a basis for establishing such a serious matter as fraud in the current case. While the circumstances may be "suspicious", it is evidence about the applicant's case that is necessary, not simply the drawing of inferences from the circumstances in other cases.

18. As such, the Tribunal must make an assessment as to whether there is evidence that is sufficiently probative to lead to a conclusion that the information given by the applicant about his skills assessment and work experience was a bogus document or false or misleading in a material particular.

Whether the applicant provided a bogus document

19. When considering whether a document is a 'bogus document', it is necessary to address the elements of the definition in s.5 of the Act. According to the definition, a 'bogus document' in relation to a person, means a document that the Minister reasonably suspects is a document that:

• purports to have been, but was not, issued in respect of the person; or

• is counterfeit or has been altered by a person who does not have authority to do so; or

• was obtained because of a false or misleading statement, whether or not made knowingly.

20. In support of his visa application, the applicant provided several documents including:

• TRA skills assessment dated 4 October 2018 – **Attachment 2**

• Employment verification letter from city Taxi Care dated 16 August 2018 - **Attachment 3**

• Paysheets from 5 June 2017 to 30 September 2018 – **Attachment 4**

• Banks statements from 22 July 2017 to 21 September 2018 – **Attachment 5**

• 2017, 2018 and 2019 PAYG - **Attachment 6**

• 2017, 2018 and 2019 ATO Tax Assessment – **Attachment 7**

• 2017, 2018 and 2019 Superannuation Statement – **Attachment 8**

• Employers Payroll Activity Summary 2016 to 2017, 2017 to 2018 and 2018 to 2019, showing salaries paid for all employees, including the visa applicant's salary– **Attachment 9**

21. The delegate refused the visa application and concluded that the work experience claims of the applicant in order to obtain his TRA skills assessment as a motor mechanic were false or misleading in a material particular.

22. In doing so the delegate refers to an ABF visit to the employer's premises on 29 November 2017. During this visit ABF officers interviewed another employee who confirmed that the applicant had worked for the business as a motor mechanic.

23. The delegates reference to the site visit by ABF on 29 November 2017 formed the basis of the delegates decision but this observation must be considered in light of the

following:

• Regulation 5.19(3)(b) requires the nominator to be or have been the relevant standard business sponsor who is actively and lawfully operating a business in Australia. In addition, the nominator, as that standard business sponsor, must not have met certain criteria relating to the operation of a business overseas, in the most recent sponsorship approval.

• The Department's records indicate that the applicant was approved as a standard business sponsor from 16 May 2012 to 16 May 2015, 16 June 2015 to 16 June 2020, and 16 May 2018 to 7 September 2018. On 28 August 2018, the Department cancelled the standard business sponsorship approval and imposed a 4-year bar under s140M of the Act on the basis that the applicant failed to meet r.2.89 of the Migration Regulations 1994 (the Regulations). The Department found that the applicant had failed to satisfy r.2.86 Obligation to ensure primary sponsored person works or participates in nominated occupation, program or activity and r.2.90 Provision of false or misleading information. The decision of the department was reached following the same ABF site visit which occurred on 29 November 2017 and to which the delegate in this case makes reference to in their decision to refuse the applicants Skilled – Nominated (sub class 190) visa.

• The Department sanction on 28 August 2018 was in essence, a bar on the applicant nominating any nominee in the specified four-year period. As noted above at paragraph 5 above, the Tribunal (differently constituted) set aside the decision under review (***refer case 1826906***) and substituted a decision not to take one or more of the actions specified in s 140M of the Migration Act 1958. - **Attachment 10**

• The applicant operated as a sole trader until the business structure changed and City Taxi Care Pty Ltd was incorporated in 2011. At the time of incorporation, the business was operating out of a property in Brunswick with a fleet of 10 taxis, 12 drivers and 2 mechanics.

• Not only did the business operate a fleet of its own taxis, it also operated a workshop for the maintenance and repair of taxis. In addition to servicing and repairing its own taxis, the vehicle repair and maintenance service component of the business was also external facing and specialised in providing services to other taxi companies operating in the Melbourne metropolitan area. By 2014, the applicant operated more than 50 vehicles and had 4 individuals on 457 visas supporting his business. The applicant continues to operate City Taxi Care Mechanics and Motor Engineers at the 2 sites, Brunswick and Tullamarine, in Melbourne, Victoria.

• The Tribunal case dealing with the employer's sanction considered the circumstances in which the Department formed its conclusions and obtained evidence not available to the Department at the time of making its decision. The Tribunal also had the opportunity to question the applicant director, Mr Grewal, about his business operations and hear evidence from numerous employees, regarding their employment as well as supplementary evidence from other parties. The Tribunal in that case, found the evidence from Mr Grewal and the other witnesses to be consistent and credible.

• The Tribunal set aside the decision under review and substituted a decision not to take one or more of the actions specified in s140M of the Migration Act 1958. The Tribunal in that case, having regard to all the sworn evidence and material before it, found that there was no adverse information known to Immigration about the nominator or person associated with the nominator.

• Subsequent to this decision, the Tribunal has approved the nomination of employees that had their visa applications refused or cancelled because of the alleged adverse material against their employer. The tribunals decision in ***Case 1900138 – City Taxi Care, dated 5 June 2022*** relates to another employee's sub class 186 employer

nomination refusal. In this case the tribunal approved the nomination and in doing so set out the background that led to the sponsorship bar and nomination refusal – **Attachment 11**

• The second Tribunal decision is ***Case 1913512 – City Taxi Care, dated 24 July 2022*** – **Attachment 12**

• In the above cases, the tribunal approved the nomination of another employee who's original 186 nomination had been refused. The nominees that were the subject of the above tribunal decisions have also now been granted their 186 visas.

• In a further decision in ***Case 1907677 – Rinku Rinku, dated 18 January 2022,*** the Tribunal set aside the cancellation of another employees 457 visa – **Attachment 13.** The Tribunal relied on the findings of the tribunal decision in Attachment 10 above.

24. An invitation to comment notice was sent to the applicant on 24 June 2021. In response to this notice the applicant provided the following additional documents to support his visa application:

• Sponsors statement dated 9 November 2021 – see **Attachment 14**

• Applicants statement dated 9 November 2021 with relevant attachments (Attachments 1-5) - **Attachment 15**

This includes his TRA skills assessment report and photographs taken by the assessor during the technical on-site assessment - see **Attachment 16**

25. Based on the evidence before the Tribunal, the Tribunal should find that the work experience claims of the applicant and his supporting material lodged with TRA in order to obtain his skills assessment and associated evidence of remuneration are not false or misleading documents and were issued in respect of the applicant by the business owner Mr Grewal who had the authority to do so.

22. The Tribunal should further find that the work reference letters were not obtained because of a false and misleading statement made by the applicant or his employer. Based on the evidence before it, the Tribunal should accept that the applicant worked at City Taxi Care Pty Ltd as stated in the visa application form and work reference letters.

23. Accordingly, the Tribunal should find that the applicant has not given or caused to be given a bogus document to the Department with his visa application.

24. Specifically, the tribunal should find that the applicants meet Public Interest Criteria PIC 4020 (1) of PIC 4020 and meet cl 190.216"

Has the applicant given, or caused to be given a bogus document, or information that is false or misleading in material particular?

46. The term 'information that is false or misleading in a material particular' is defined in PIC 4020(5) and the term 'bogus document' is defined in s 5(1) of the Act (see the attachment to this decision). In contrast to the definition of 'information that is false or misleading in a material particular' in PIC 4020(5), the reference in the definition of bogus document to a document that was obtained because of a 'false or misleading' statement has no requirement that it be relevant to a criterion for the grant of the visa: *Arora v MIBP* [2016] FCAFC 35; *Batra v MIAC* [2013] FCA 274.

47. The requirement in PIC 4020(1) not to provide a bogus document, or false or misleading information, applies whether or not the Minister became aware of the bogus document or information that is false or misleading in a material particular because of information given by the applicant: PIC 4020(3). It also applies whether or not the document or information was provided by the applicant knowingly or unwittingly.

48. While PIC 4020 refers to information that is false, in the sense of purposely untrue, it is not necessary for the Minister (or the Tribunal on review) to conclude that the applicant was aware the information was purposely untrue in order for PIC 4020 to be engaged. However,

an element of fraud or deception by some person is necessary to attract the operation of the provision: *Trivedi v MIBP* [2014] FCAFC 42.

49. The Tribunal is satisfied on the basis of the evidence that the applicant worked with City Taxi Care Pty Ltd and that he participated in the Job Ready scheme from 5 July 2017 to 1 July 2018 and continued to work with City Taxi Care Pty Ltd until 20 December 2018.

50. The applicant provided bank account records that demonstrated that the applicant was paid wages either weekly or fortnightly of an amount of $629 or $1258, respectively, which was corroborated by his Westpac bank account deposits. This information was also corroborated by his employer, Mr Grewal in evidence at hearing and through the provision of the business's Westpac bank statements.

51. Further, the Tribunal is satisfied that the applicant worked at both the Brunswick and Tullamarine workshops of City Taxi Care Pty Ltd and successfully completed an assessment by TRA regarding the nominated occupation of Motor Mechanic (General) – ANZSCO Code: 233411 under the auspices of the Job Ready scheme.

52. There is no probative evidence before the Tribunal that Mr Suri has given, or caused to be given, to the Minister, an officer, the Tribunal, a relevant assessing authority or a Medical Officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular in relation to the application for the visa or a visa that he held in the period of 12 months before the application was made.

53. Therefore, the applicant meets PIC 4020(1).

Has a visa previously been refused on the basis of a failure to satisfy PIC 4020(1)?

54. PIC 4020(2) requires the Tribunal to be satisfied that the applicant and each member of the family unit have not been refused a visa because of a failure to satisfy PIC 4020(1) in the period commencing 3 years before the application was made and ending when the visa is granted or refused. This requirement does not apply to a person who was under 18 at the time the application for the refused visa was made: PIC 4020(2AA).

55. There is no evidence that Mr Suri or any member of his family unit have been refused a visa because of a failure to satisfy PIC4020 (1) in the period commencing three years before the application was made and ending when the visa is granted or refused.

56. Therefore, PIC 4020(2) is met.

Has the applicant satisfied the identity requirements?

57. PIC 4020(2A) requires an applicant satisfy the Tribunal as to his or her identity.

58. The Tribunal has viewed Mr Suri's passport. There is no evidence that the applicant is not Mr Suri.

59. On this basis, Mr Suri has satisfied the Tribunal as to his identity.

60. Therefore, the applicant meets PIC 4020(2A).

Has a visa previously been refused on the basis of a failure to satisfy PIC 4020(2A)?

61. PIC 4020(2B) requires that neither the applicant nor any family unit member have been refused a visa because of a failure to satisfy the identity requirements in PIC 4020(2A)

during the period starting 10 years before the application was made and ending when the visa is granted or refused. This requirement does not apply to a person who was under 18 at the time the application for the refused visa was made: PIC 4020(2BA).

62. There is no evidence that Mr Suri or any member of his family unit have been refused a visa.
63.
64. Therefore PIC 4020(2B) is met.

65. On the basis of the above, the applicant does satisfy PIC 4020 for the purposes of cl 190.216.

DECISION

66. The Tribunal remits the applications for Skilled Nominated (Permanent) visas for reconsideration, with the direction that the first named applicant and secondary applicants meet the following criteria for Subclass 190 - Skilled - Nominated visas:

    - Public Interest Criterion 4020 for the purposes of cl 190.216 of Schedule 2 to the Regulations

Warren Stooke AM
Member

ATTACHMENT

Migration Regulations 1994

Schedule 4

4020 (1) There is no evidence before the Minister that the applicant has given, or caused to be given, to the Minister, an officer, the Tribunal during the review of a Part 5 reviewable decision, a relevant assessing authority or a Medical Officer of the Commonwealth, a bogus document or information that is false or misleading in a material particular in relation to:

(a) the application for the visa; or

(b) a visa that the applicant held in the period of 12 months before the application was made.

(2) The Minister is satisfied that during the period:

(a) starting 3 years before the application was made; and

(b) ending when the Minister makes a decision to grant or refuse to grant the visa;

the applicant and each member of the family unit of the applicant has not been refused a visa because of a failure to satisfy the criteria in subclause (1).

(2AA) However, subclause (2) does not apply to the applicant if, at the time the application for the refused visa was made, the applicant was under 18.

(2A) The applicant satisfies the Minister as to the applicant's identity.

(2B) The Minister is satisfied that during the period:

(a) starting 10 years before the application was made; and

(b) ending when the Minister makes a decision to grant or refuse to grant the visa;

neither the applicant, nor any member of the family unit of the applicant, has been refused a visa because of a failure to satisfy the criteria in subclause (2A).

(2BA) However, subclause (2B) does not apply to the applicant if, at the time the application for the refused visa was made, the applicant was under 18.

(3) To avoid doubt, subclauses (1) and (2) apply whether or not the Minister became aware of the bogus document or information that is false or misleading in a material particular because of information given by the applicant.

(4) The Minister may waive the requirements of any or all of paragraphs (1)(a) or (b) and subclause (2) if satisfied that:

(a) compelling circumstances that affect the interests of Australia; or

(b) compassionate or compelling circumstances that affect the interests of an Australian citizen, an Australian permanent resident or an eligible New Zealand citizen;

justify the granting of the visa.

(5) In this clause:

information that is ***false or misleading in a material particular*** means information that is:

(a) false or misleading at the time it is given; and

(b) relevant to any of the criteria the Minister may consider when making a decision on an application, whether or not the decision is made because of that information.

…

Migration Act 1958

s 5 Interpretation

(1) In this Act, unless contrary intention appears:

…

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

(a) purports to have been, but was not, issued in respect of the person; or

(b) is counterfeit or has been altered by a person who does not have authority to do so; or

(c) was obtained because of a false or misleading statement, whether or not made knowingly.

…